

1 Michele R. Stafford, Esq. (SBN 172509)  
Edward D. Winchester (SBN 271500)  
2 SALTZMAN & JOHNSON LAW CORPORATION  
44 Montgomery Street, Suite 2110  
3 San Francisco, CA 94104  
(415) 882-7900  
4 (415) 882-9287 – Facsimile  
[mstafford@sjlawcorp.com](mailto:mstafford@sjlawcorp.com)  
5 [ewinchester@sjlawcorp.com](mailto:ewinchester@sjlawcorp.com)

6 Attorneys for Plaintiffs, Sheet Metal Workers  
Pension Plan of Northern California, et al.  
7

8 UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10

11 SHEET METAL WORKERS PENSION PLAN  
OF NORTHERN CALIFORNIA; and its  
12 BOARD OF TRUSTEES;

13 RICK WERNER, Trustee;  
14

15 Plaintiffs,

16 v.

17 J. H. SIMPSON COMPANY, INC., a California  
corporation;

18 Defendant.

Case No.:

**COMPLAINT**

19  
20 Parties

21 1. The Sheet Metal Workers Pension Plan of Northern California (hereinafter  
22 collectively referred to as “Trust Fund”), is an employee benefit plan as defined in the Employee  
23 Retirement Income Security Act of 1974 ("ERISA") § 3(3), 29 U.S.C. § 1002(3). The Trust Fund is  
24 authorized to distribute amounts due by its signatory employers to the various Funds and Plans  
25 described herein. Plaintiff Rick Werner is a Trustee and fiduciary, under ERISA § 402(a), 29  
26 U.S.C. § 1002(a), of the Plaintiff Trust Fund, with authority to act on behalf of all of its Trustees.  
27 Plaintiffs’ Trust Fund and its Trustee are referred to herein as “ERISA Plaintiffs” or “Plaintiffs.”  
28 Plaintiffs are authorized to bring suit and collect monies for all other funds to which Defendants are

1 obligated to contribute under the Collective Bargaining Agreement described below.

2       2. J. H. Simpson Company, Inc., a California corporation (“Defendant”), is an  
3 employer by virtue of ERISA § 3(5), 29 U.S.C. § 1002(5), and NLRA § 2(2), 29 U.S.C. § 152(2).

4                                   Jurisdiction

5       3. Jurisdiction exists in this Court over the claims asserted by ERISA Plaintiffs by  
6 virtue of ERISA § 502, 29 U.S.C. § 1132, in that ERISA Plaintiffs seek to enforce the provisions of  
7 ERISA and the terms of their plans, seek to enjoin the acts and practices which violate ERISA, seek  
8 equitable relief to redress such violations, and seek all other appropriate relief under ERISA.

9       4. Jurisdiction exists in this Court over all the claims by virtue of the Labor  
10 Management Relations Act (“LMRA”) § 301, 29 U.S.C. § 185, in that Plaintiffs seek to enforce the  
11 terms and conditions of a valid Bargaining Agreement.

12       5. To the extent jurisdiction over any claim does not exist under ERISA or the LMRA,  
13 supplemental jurisdiction exists in this Court over such claims by virtue of 29 U.S.C. § 1367 in that  
14 they arise out of a common nucleus of operative facts that form the basis of the federal claims  
15 asserted herein, each of which has a substantial ground in federal jurisdiction.

16                                   Venue

17       6. Venue is conferred upon this Court by ERISA § 502, 29 U.S.C. § 1132. Where an  
18 action is brought under ERISA § 502 in a district court of the United States, it may be brought at  
19 Plaintiffs’ discretion, in the district where the plan is administered, where the breach took place, or  
20 where a defendant resides or may be found, and process may be served in any other district where a  
21 defendant resides or may be found. ERISA Plaintiff’s Trust Fund is administered in this district at  
22 their principal place of business in San Ramon, California. Thus, jurisdiction and venue are  
23 properly grounded with this Court.

24       7. Venue exists in this Court with respect to the claims under LMRA § 301(a), 29  
25 U.S.C. § 185, as this Court has jurisdiction over the parties, as the Union maintains its principal  
26 place of business in this district, its duly authorized officers or agents are engaged in representing  
27 employee members in this district, and the claims arise in this district.

28                                   Intradistrict Assignment

8. The basis for assignment of this action to this Court's Oakland Division is that all of the events and omissions giving rise to Plaintiffs' claims occurred in the County of Contra Costa, where ERISA Plaintiffs' Funds and the Bargained Plans are administered, and where Defendant therefore failed to fulfill its statutory and contractual obligations to Plaintiffs.

#### Bargaining Agreement

9. Defendant entered into the Labor Agreement ("Bargaining Agreement") between the Sheet Metal Workers Local Union 162 and the Sheet Metal and Air Conditioning Contractors National Association's Sacramento Valley, Northern San Joaquin, and Central Valley Chapters ("SMACNA"), requiring Defendants to provide employer contributions to Plaintiffs' Trust Fund, to the other plans more fully described in the Bargaining Agreement, and to the Union for union dues. ERISA Plaintiffs are third-party beneficiaries of the Bargaining Agreement.

10. Under the terms of the Bargaining Agreement, Defendants are required to pay certain contributions to: the Northern California Sheet Metal Workers Excess Benefits Plan; Sheet Metal Workers' Local Union No. 162 Vacation Plan; Sacramento Valley Sheet Metal Heating and Air Conditioning Industry Fund; International Training Institute for the Sheet Metal and Air Conditioning Industry; National Energy Management Institute Committee; Sheet Metal Occupational Health Institute Trust; Vacation-Holiday Savings Plan; Sheet Metal Workers National Pension Trust Fund; Labor Management Cooperation Trust; Industry Fund; and Northern California Valley, Modesto and Fresno Sheet Metal, Heating and Air Conditioning Apprentice and Mechanic Training Funds (collectively referred to hereinafter as the "Bargained Plans"). Plaintiffs' Board of Trustees has been authorized to collect and distribute monies due to the Bargained Plans under the Bargaining Agreement, and under the governing documents of ERISA Plaintiffs ("Trust Agreements") that are incorporated into the Bargaining Agreement, which Defendants agreed to be bound by.

11. Under the Bargaining Agreement, and Trust Agreements, Defendant is required to regularly pay to ERISA Plaintiffs, the Bargained Plans, and the Union, certain sums of money, the amounts of which are determined by the hours worked by Defendant's employees. Contributions are due on the twenty-second (22<sup>nd</sup>) day of the month following the month during which hours were



**FIRST CAUSE OF ACTION**  
**For Payment of Delinquent Contributions, Interest, Liquidated Damages, Attorneys' Fees**  
**and Costs Against Defendant**

15. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 14, above.

16. Defendant has a contractual duty to timely pay the required contributions to Plaintiffs and the Bargained Plans, and to timely pay dues to the Union, pursuant to the Bargaining and Trust Agreements.

17. In addition, Defendant has a statutory duty to timely make the required payments to Plaintiffs under ERISA § 515, 29 U.S.C. § 1145, and LMRA § 301(a).

18. By failing to make the required payments to Plaintiffs, Defendant breached the Bargaining and Trust Agreements and is in violation of ERISA § 515, 29 U.S.C. § 1145, and LMRA § 301(a).

19. Defendant's failure and refusal to pay the required contributions was at all times, and still is, willful. Defendant continues to breach the Bargaining Agreement, and incorporated Trust Agreements, by failing to pay all amounts owed as alleged. Said refusal is unjustified and done with knowledge and intent.

20. ERISA Plaintiffs are without an adequate remedy at law and will suffer continuing and irreparable injury, loss and damage unless Defendant is ordered specifically to perform all obligations required on Defendant's part to be performed under ERISA, 29 U.S.C. §§ 1101-1381, the LMRA, 29 U.S.C. §§ 141-197, and the Bargaining and Trust Agreements, and is restrained from continuing to refuse to perform as required thereunder.

21. This Court is authorized to issue injunctive relief based on the traditional standard. As set forth above, ERISA Plaintiffs have a strong likelihood of success on the merits. There is the possibility that ERISA Plaintiffs' Trust Funds and their participants will suffer irreparable injuries. The balance of hardships and advancement of public interest favor ERISA Plaintiffs.

22. This Complaint does not in any manner relate to statutory withdrawal liability that may or may not be assessed against Defendant. ERISA Plaintiffs expressly reserve the right to pursue any such withdrawal liability claims against Defendant as provided by ERISA Plaintiffs' Plan Documents, Trust Agreements, and the law.

Prayer

WHEREFORE, Plaintiffs pray as follows:

1. For a judgment against Defendant as follows:

(a) Any unpaid contributions, due at time of Judgment, including those specified above as well as any other contributions determined as due by audit, timecards, or otherwise, including estimated contributions for months Defendant fails to report to Plaintiffs, pursuant to ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A);

i. To ERISA Plaintiffs and the Bargained Plans, in accordance with ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A) and the Bargaining Agreement;

ii. To the Union in accordance with the Bargaining Agreement.

(b) Liquidated damages on all late paid and unpaid contributions in an amount provided for under the Bargaining and Trust Agreements, and with respect to ERISA Plaintiffs, ERISA § 502(g)(2)(c), 29 U.S.C. § 1132(g)(2)(c).

(c) Interest on all late paid and unpaid contributions at the rates set in accordance with the Bargaining and Trust Agreements, and ERISA § 502(g)(2)(B), 29 U.S.C. § 1132(g)(2)(B).

2. Plaintiffs' reasonable attorneys' fees and costs of this action, including any audit fees, in accordance with ERISA § 502(g)(2)(D) and (E), 29 U.S.C. § 1132(g)(2)(D) and (E); and in accordance with the Bargaining Agreement for all Bargained Plans; and with LMRA § 301, 29 U.S.C. § 185, for all Plaintiffs.

3. For an order,

(a) requiring that Defendant comply with its obligations to Plaintiffs under the terms of the Bargaining Agreement and the Trust Agreements;

(b) enjoining Defendant from violating the terms of those documents and of ERISA; and

(c) enjoining Defendant from disposing of any assets until said terms have been complied with, and from continuation or operation of Defendant's business until said terms have been complied with.

4. That the Court retain jurisdiction of this case pending compliance with its orders.

Dated: November 2, 2016

By: /S/  
Edward D. Winchester  
Attorneys for Plaintiffs, Sheet Metal  
Workers Pension Plan of Northern  
California, et al.